

FILED

FEB 1 2008

**Board of Vocational Nursing
and Psychiatric Technicians**

EDMUND G. BROWN JR., Attorney General
of the State of California
GREGORY J. SALUTE
Supervising Deputy Attorney General
BRIAN G. WALSH, State Bar No. 207621
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2535
Facsimile: (213) 897-2804

Attorneys for Complainant

**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2002-553

MARY LYNN FLINT-HERRERA
44245 N. Kingtree Avenue, #3
Lancaster, CA 93534

A C C U S A T I O N

Vocational Nurse License No. VN 179722

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs.
2. On or about February 13, 1997, the Board issued Vocational Nurse License No. VN 179722 to Mary Lynn Flint-Herrera (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2008, unless renewed.

///

///

///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

3. This Accusation is brought before the Board, under the authority of the

5

6

7
8
9
0

3
4
5
6
7

8
9
10
11

2

3
4
5

6
7
8

1 9. Section 2875 of the Business and Professions Code (Code) provides, in
2 relevant part, that the Board may discipline the holder of a vocational nurse license for any
3 reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice
4 Act.

5 10. Section 2878 of the Code states:

6 The Board may suspend or revoke a license issued under this chapter [the
7 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of
the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
9 following:

10

11 (d) Violating or attempting to violate, directly or indirectly, or
12 assisting in or abetting the violating of, or conspiring to violate any provision or
term of this chapter.

13

14 (f) Conviction of a crime substantially related to the qualifications,
15 functions, and duties of a licensed vocational nurse, in which event the record of
the conviction shall be conclusive evidence of the conviction.

16

17 (j) The commission of any act involving dishonesty, when that action
is related to the duties and functions of the licensee.

18 11. Section 2878.5 of the Code states:

19 In addition to other acts constituting unprofessional conduct within the
20 meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional
conduct for a person licensed under this chapter to do any of the following:

21 (a) Obtain or possess in violation of law, or prescribe, or except as
22 directed by a licensed physician and surgeon, dentist or podiatrist administer to
himself or herself or furnish or administer to another, any controlled substance as
23 defined in Division 10 of the Health and Safety Code, or any dangerous drug as
defined in Section 4022.

24 (b) Use any controlled substance as defined in Division 10 of the
25 Health and Safety Code, or any dangerous drug as defined in Section 4022, or
26 alcoholic beverages, to an extent or in a manner dangerous or injurious to himself
or herself, any other person, or the public, or to the extent that the use impairs his
27 or her ability to conduct with safety to the public the practice authorized by his or
her license.

28 ///

12. Section 2878.6 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a licensed vocational nurse is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

REGULATORY PROVISIONS

13. California Code of Regulations, title 16, section 2504, states:

All persons holding a license from the Board shall file their current mailing address with the Board at its office in Sacramento, and shall immediately notify the Board of any and all changes of mailing address, within 30 days after the change, giving both their old and new addresses and license number.

14. California Code of Regulations, title 16, section 2521, states:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare.

15. METHAMPHETAMINE IS A CONTROLLED SUBSTANCE AND A DANGEROUS DRUG.

"Methamphetamine," is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2) and is categorized as a "dangerous drug" pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Convictions of Substantially Related Crimes)

A. Respondent's June 12, 2002 Burglary Conviction.

16. Respondent is subject to disciplinary action under Code sections 490, 2878, subdivision (f), and 2878.6, in that Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse, as defined in the

1 California Code of Regulations, title 16, section 2521. On or about June 12, 2002, Respondent
2 was convicted by the Court on a plea of nolo contendere for violating one count of Penal Code
3 section 459, a felony (burglary: first degree), in the Superior Court of California, County of Los
4 Angeles, North Judicial District, Case No. MA024562 entitled *The People of the State of*
5 *California v. Mary Lynn Flint-Herrera*.

6 17. The circumstances surrounding the conviction are that on or about
7 May 19, 2002, Respondent and another person entered a Wal-Mart in Lancaster, California, and
8 stole preselected merchandise from the store. As a result of the June 12, 2002 conviction,
9 Respondent was sentenced to 365 days in jail and three years of probation.

10 **B. Respondent's April 12, 2002 Conviction for Carrying a Loaded Firearm.**

11 18. On or about April 12, 2002, Respondent was convicted by the Court on a
12 plea of nolo contendere for violating one count of Penal Code section 12031, subdivision (a)(1),
13 a misdemeanor (carrying loaded firearm) in the Superior Court of California, County of
14 Los Angeles, Case No. MA024126 entitled *The People of the State of California v. Mary Lynn*
15 *Flint-Herrera*.

16 19. The circumstances surrounding the conviction are that on or about
17 March 10, 2002, during a traffic stop by a police officer, Respondent was found to be carrying a
18 loaded stolen firearm in her vehicle. As a result of this conviction, Respondent was sentenced to
19 96 days in jail and three years of summary probation.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Dishonest Acts)**

22 20. Respondent is subject to disciplinary action under Code section 2878,
23 subdivision (j) of the Code, as a result of the dishonest acts that Respondent committed when she
24 stole merchandise from the Walmart in Lancaster, California on May 19, 2002, as more fully set
25 forth above in paragraphs 16-17.

26 ///

27 ///

28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct / Use of a Controlled Substance)**

3 21. Respondent is subject to disciplinary action under Code section 2878,
4 subdivision (a), and section 2878.5, subdivision (b), for unprofessional conduct in the form of
5 using a controlled substance. On or about March 10, 2002, during a traffic stop by a police
6 officer, Respondent admitted that she had used a controlled substance three hours earlier.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct / Possession of a Controlled Substance)**

9 22. Respondent is subject to disciplinary action under Code section 2878,
10 subdivision (a), and section 2878.5, subdivision (b), for unprofessional conduct in the form of
11 possession of a controlled substance, namely methamphetamine. On or about March 10, 2002,
12 during a traffic stop by a police officer, the arresting officer discovered methamphetamine, which
13 Respondent admitted belonged to her, resulting in a charge of violating Health and Safety Code
14 section 11377, subdivision (a).¹

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Failure to Notify the Board of a Change of Address)**

17 23. Respondent is subject to disciplinary action under section 136,
18 subdivisions (a) and (b), section 2878, subdivision (d), and California Code of Regulations, title
19 16, section 2504, in that during the year 2006, Respondent failed to notify the Board of a change
20 of address within 30 days, and further failed to respond to related requests for information sent
21 by the Board.

22 ///

23 ///

24 _____
25 1. As a result of Respondent's successful participation in a deferred entry of judgment
26 program, this arrest did not result in a conviction. And while such successful participation bars
27 the from seeking discipline based on the arrest report alone (*B.W. v. Board of Medical Quality*
28 *Assurance* (1985) Cal.App.3d 219, 233), the Board is not barred from seeking discipline based
on the underlying acts when, as here, the Board will not be relying solely on the arrest report to
prove the underlying behavior.

1 **PRAYER**

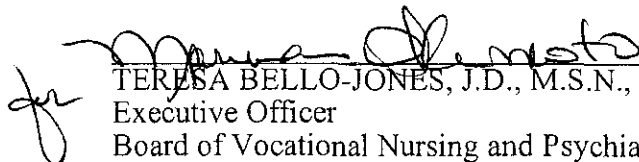
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board issue a decision:

4 1. Revoking or suspending Vocational Nurse License No. VN 179722, issued
5 to Respondent;

6 2. Ordering Respondent to pay the Board the reasonable costs of the
7 investigation and enforcement of this case, pursuant to Business and Professions Code section
8 125.3; and

9 3. Taking such other and further action as deemed necessary and proper.
10

11 DATED: February 1, 2008
12

13
14 
15 TERESA BELLO-JONES, J.D., M.S.N., R.N.
16 Executive Officer
17 Board of Vocational Nursing and Psychiatric Technicians
18 State of California
19 Complainant
20
21
22
23
24
25

26 LA2007601184

27 60268097.wpd
28